BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Hugh B. Jamieson Ward 57, Block 2, Parcel 4 Residential Property Tax year 2005	))))	Shelby County

INITIAL DECISION AND ORDER

Statement of the Case

The Shelby County Board of Equalization has valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$654,600	$5,200	$659,800	$164,950

On February 6, 2006, the property owner filed an appeal with the State Board of Equalization ("State Board").[1]

The undersigned administrative judge conducted a hearing of this matter on April 4, 2006 in Memphis. In attendance at the hearing were the appellant, Hugh B. Jamieson, and Shelby County Property Assessor's representative Chris Kirby.

Findings of Fact and Conclusions of Law

The 1.5-acre parcel in question is located at 4143 Gwynne Road in Memphis. Situated on this lot is a 2,446-square-foot house which was built around 1940.

Based on an independent appraisal of the subject property that was commissioned by a prospective lender (South Trust Bank), Mr. Jamieson requested a reduced value of $540,000. The appraiser, Kelly Shirey, commented in his report of August 2, 2004 that:

> Subject's neighborhood is in transition to multi-million dollar homes on 1-2 acre lots. Lot across the street sold 4 years ago for $800,000 and house was torn down.

The Assessor's representative took issue with Shirey's appraisal on the ground that it failed to recognize the highest and best use of the subject property. In Mr. Kirby's view, this was a "tear-down" area in which a prospective buyer of the property would likely erect a much larger home on the premises. He introduced a map showing the many lots in the neighborhood on which single-family residences of at least 3,500 square feet had been built since 1995. Mr.

[1]The taxpayer timely petitioned the county board of equalization for review of this assessment pursuant to Tenn. Code Ann. section 67-5-1407. However, according to his sworn testimony before the undersigned administrative judge, Mr. Jamieson was unable to attend the scheduled hearing of that complaint on December 6, 2005 because of his wife's surgery the day before. Hence the State Board may accept this appeal under the "reasonable cause" provision of Tenn. Code Ann. section 67-5-1412(e).

Kirby also pinpointed several recent sales of improved and vacant lots in the vicinity – including one directly across the street from the subject – at prices ranging from about $415,000 to $855,000 per acre.[2] Except for deletion of the minimal value attributed to the subject house ($5,200), he recommended no change in the current appraisal.

Tenn. Code Ann. section 67-5-601(a) provides (in relevant part) that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...."

Since the taxpayer seeks to change the present valuation of the subject property, he has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

In the opinion of the administrative judge, the evidence of record favors the slightly reduced value recommended by the Assessor's representative. The preparer of the aforementioned appraisal report was not called to testify at the hearing; consequently, his opinion of value must be discounted as *hearsay*.[3] Even apart from this consideration, the appraiser's comparative sales analysis is seemingly undermined by his own observation as to prevailing trend in the appellant's neighborhood. Indeed, from a real estate appraisal standpoint, the facts of this case do not appear to differ materially from those in an earlier appeal to the State Board cited by the Assessor's representative: Kathleen B. Ford (Shelby County, Tax Year 2001, Initial Decision and Order, July 15, 2002) (copy attached). For the reasons stated therein, the administrative judge concluded that "the appropriate unit of comparison in the application of the sales comparison approach is the amount of acreage – not the square footage of the house." *Id.* at p. 2. Likewise, when realistically treated as the equivalent of land transactions, the comparable sales identified by Mr. Kirby support the present valuation of the subject lot.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2005:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$654,600	$0	$654,600	$163,650

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

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[2]It should be noted that most of those sales involved somewhat smaller lots.

[3]*Hearsay* is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tenn. R. Evid. 801(c).

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27th day of April, 2006.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Hugh B. Jamieson
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office
Rita Clark, Assessor of Property

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ATTACHMENT TO INITIAL DECISION AND ORDER

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	Kathleen B. Ford Ward 80, Block 19, Parcel 2 Residential Property Tax Year 2001	))))	Shelby County

INITIAL DECISION AND ORDER

Statement of the Case

The Shelby County Board of Equalization reduced the appraisal of the subject property from $501,100 to $455,400, allocating that amount as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$384,000	$71,400	$455,400	$113,850

On January 18, 2002, the State Board of Equalization received an appeal by the property owner.

The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on June 19, 2002 in Memphis. The appellant was represented at the hearing by her husband, Charles H. Ford. Staff appraiser Nathan Chamness appeared on behalf of the Shelby County Assessor of Property.

Findings of Fact and Conclusions of Law

In the appraisal of property for tax purposes, Tenn. Code Ann. section 67-5-601(a) prohibits the consideration of "speculative values." The appellant contends that the subject property has been appraised in violation of this statute.

The parcel in question is a 1.8-acre lot at 6387 Ronald in Memphis. Situated on this land is a one-story, brick-veneer dwelling that was built in 1956. With a total living area of 2,380 square feet, this home is considerably smaller than most of the houses in the immediate vicinity.

In the opinion of the Assessor's representative, it was "highly likely" that a buyer of the subject property would demolish the existing building and erect a larger residence on the site. That was apparently the fate of the homes which once sat on the spacious lots at 6366 and 6367 Ronald. Those properties sold in 1999 and 2000 for $445,000 and $595,000, respectively. For appraisal purposes, according to Mr. Chamness, his office deemed those transactions to be the equivalent of vacant land sales. Viewed as such, both comparable sales brought more than the approximately $213,000-per-acre amount at which the subject land is currently appraised. While acknowledging that the subject house would probably have little (if any) contributory value, Mr. Chamness supposed that such improvement had been separately valued "in use" on the basis of a cost approach.

The taxpayer claimed that property in question was only worth about $270,200. Attached to the appellant's written submission was a list of homes "located within approximately 800 yards of (the) subject property" that had sold during the two-year period before the January

1, 2001 reappraisal date – including the Assessor's 6366 and 6367 Ronald comparables. But whereas the Assessor's representative had focused on the size of the lot involved in those sales, Mr. Ford insisted that:

> The proper approach to obtaining a valid "fair market value" of property with a smaller house on a larger lot is to determine the appropriate amount to add to the average sales price of other comparable property in the neighborhood to compensate for this unique condition. The approach not to take is the one of appraising this type of property on a "speculative value" basis as a sale to only one particular buyer, the "demolition buyer".

He derived his estimate of value for the property under appeal by multiplying the sale price per square foot of building area for 6367 Ronald ($122.09) – a purportedly superior house on a 1.9-acre lot – times a factor of 0.93. Unlike the Assessor's representative, Mr. Ford believed that the chances of a sale of the subject property to a so-called "demolition buyer" were "pretty slim."

As the party seeking to change the present valuation of the subject property, the taxpayer has the burden of proof in this administrative proceeding. State Board of Equalization Rule 0600-1-.11(1).

Essential to accurate estimation of the market value of real property is an analysis of its *highest and best use*: i.e., "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." Appraisal Institute, The Dictionary of Real Estate Appraisal (3rd ed. 1993), p. 171. There is no question that the highest and best use of the subject land is for residential purposes. But as explained in an authoritative textbook:

> If an improvement is needed to realize the highest and best use of the land, the appraiser must determine the type and characteristics of the *ideal improvement* to be constructed. The ideal improvement is one that would take maximum advantage of the site's potential, conform to current market standards, and contain the most suitably priced components.

Appraisal Institute, The Appraisal of Real Estate (11th ed. 1996), p. 300.

In light of this consideration, the administrative judge must respectfully reject the drastically lower appraisal sought by the appellant. That value was apparently predicated on an unrealistic assumption: namely, that a successful buyer of the highly desirable expanse of land in question would continue to occupy and use the aging and undersized house on the premises. Undue speculation is not required to accept demolition of the existing improvement as the more plausible scenario. Given that prospect, the appropriate unit of comparison in the application of the sales comparison approach is the amount of acreage – not the square footage of the house.

But the principle of *consistent use* holds that "land cannot be valued on the basis of one use while the improvements are valued on the basis of another." The Dictionary of Real Estate Appraisal, *supra*, p. 72. In adding the estimated "use value" of the existing improvement to the **market value** of the subject land (based on its highest and best use as the site of a newer and more elaborate home), the current appraisal seemingly deviates from this principle. Consequently, the $71,400 value attributed to the subject house should be removed.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2001:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$384,000	$0	$384,000	$96,000

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of July, 2002.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: Charles H. Ford
Rita Clark, Assessor of Property
Tameaka Stanton, Appeals Manager, Shelby County Assessor's Office

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